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MACROECONOMIC POLICY QUESTIONS: TRADE AND DEVELOPMENT

Economic measures as a means of political and economic coercion against developing countries

Report of the Secretary-General

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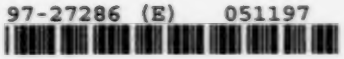

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I. INTRODUCTION

1. The present report has been prepared in response to General Assembly resolution 50/96 of 20 December 1995. In that resolution, the Assembly, inter alia, expressed concern that the use of coercive economic measures adversely affected the economy and development efforts of developing countries and had a general negative impact on international economic cooperation and on worldwide efforts to move towards a non-discriminatory and open trading system. The Assembly reaffirmed that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights.

2. In the same resolution, the General Assembly urged the international community to adopt urgent and effective measures to eliminate the use by some developed countries of unilateral coercive economic measures against developing countries which are not authorized by relevant organs of the United Nations or are inconsistent with the principles contained in the Charter of the United Nations, as a means of forcibly imposing the will of one State on another. The Assembly requested the Secretary-General to assign to the Department for Economic and Social Information and Policy Analysis of the Secretariat, in cooperation with the United Nations Conference on Trade and Development (UNCTAD), the task of continuing to monitor the imposition of measures of this nature and to prepare possible methodologies or criteria for evaluating the impact of such measures on the affected countries, including the impact on trade and development, for the consideration of Member States, and to report to it at its fifty-second session on the implementation of the resolution.

3. Accordingly, the Secretary-General, in a note verbale dated 26 March 1997, invited the Governments of all States to provide their views or any other relevant information on the issue. As at 15 September 1997, replies had been received from the Governments of the following 12 Member States: Australia, Belarus, Bolivia, Burkina Faso, Cuba, Ecuador, Estonia, Gambia, Iran (Islamic Republic of), Iraq, Mexico, and Venezuela, as well as from the observer of the Holy See. The main substantive features of those responses are summarized in chapter II of the present report.

4. In addition, relevant components of the United Nations system were also requested to provide current information on their actions, as well as possible methodologies and assessments of recent developments in the subject area. Based on the information received, chapter III of the report contains a review of recent actions by United Nations bodies and other international instruments.

5. Moreover, the Department for Economic and Social Information and Policy Analysis convened an ad hoc expert group meeting on the subject to seek the views of internationally recognized experts on the concept and implications of coercive economic measures. Deliberations of the meeting are summarized in chapter IV of the present report.

II. SUMMARY OF RESPONSES RECEIVED FROM STATES

6. The Government of Australia welcomed the opportunity to comment in the process undertaken by the Secretary-General but, at the time, had no comments to make regarding General Assembly resolution 50/96.

7. The Government of Belarus has never employed economic measures as a means of political and economic coercion and does not recognize the validity of any coercive measures or legislative acts of an extraterritorial nature that are imposed by any State on a unilateral basis.

8. The Government of Bolivia stated that it has not been affected by economic measures as a means of political and economic coercion during the period following the adoption of General Assembly resolution 50/96.

9. The Government of Burkina Faso welcomes the United Nations initiative and the spirit of General Assembly resolution 50/96. Given the fact of economic globalization, it is indeed imperative that a resolution of a dissuasive nature should prevent developed countries from exerting economic pressure on certain countries of the South. It would also be advisable to specify methodologies and criteria for evaluating the impact of such measures.

10. The Government of Cuba stated that unilateral coercive measures were punitive actions used by certain States, by virtue of their predominant position in the world economy, to impose their political will by force and to subvert the political, economic and social system of other States. Such measures were contrary to such fundamental principles of international law as the sovereign equality of States and non-intervention and non-interference in the internal affairs of sovereign States. Also, such measures blatantly contradict the purposes and principles of the Charter of the United Nations and infringe upon the norms and principles set forth in various international instruments, such as the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty,[1] the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[2] and the Charter of Economic Rights and Duties of States.[3] Moreover, such measures are contrary to the decisions of many multilateral bodies, including UNCTAD, the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), and to various resolutions of the General Assembly and the Commission on Human Rights.

11. In the opinion of the Government of Cuba, unilateral coercive measures are also blatantly interventionist and discriminatory and are applied through a wide range of economic instruments, basically related to trade, financial, technological or investment restrictions, which in any of their variants are designed to cause a critical economic situation that will force the State concerned to change the policy or policies objected to by the State applying the measures. Such measures are applied not only in the context of States' bilateral relations but also in conjunction with the application of additional direct or indirect measures through third parties, in order to increase the pressure on the country concerned. Not only are they a direct threat to the personality of the State concerned and to its stability and political, economic

and cultural integrity, but they also affect the well-being and progress of the population that is the victim of these unilateral policies. Moreover, the use of such measures contributes to a climate of distrust and arbitrariness in inter-State relations that adversely affects the overall stability of the system of international relations.

12. Since recovering its full independence in 1959, Cuba has been subjected to all manner of coercive measures, characterized by pressure, threats and hostilities whose stated purpose is to subvert the political, economic and social alternative chosen by the Cuban people in exercise of their sovereignty. The clearest expression of this increasingly aggressive conduct is the permanent economic, commercial and financial blockade unilaterally imposed against Cuba for almost four decades by the Government of the United States of America, involving an endless list of various types of coercive economic measures. The purpose of these measures is to damage the country's principal economic sectors by severely obstructing and restricting its purchase of raw materials, infrastructure and appropriate technology for its development and limiting its sources of external financing, as well as access to the market for many of its products. They also create obstacles to its conduct of commercial, currency and financial transactions with third countries and, in particular, limit any investment activity that might assist the country's economic recovery and its reintegration into the global economy. These measures have also limited the country's possibilities of purchasing essential goods such as foodstuffs and medicines, thereby adversely affecting health, sanitation and nutrition levels and the maintenance of health systems and housing. This, in turn, has directly affected the population's living standards and their enjoyment of the most elementary rights.

13. According to the Government of Cuba, in 1995, the blockade caused the Cuban economy a loss of more than $260 million merely through the loss of the United States preferential market for sugar. Additional freight costs incurred in obtaining supplies for the health sector totalled $2.7 million, while those incurred in purchasing foodstuffs and in obtaining essential chemicals for agriculture amounted to more than $46 million and over $6 million respectively. The "exceptional" terms on which Cuba is forced to conduct most of its trade, because of the so-called "Cuban risk" arising from those measures, are also increasing.

14. The Government of Cuba is extremely concerned that, despite the adoption of numerous resolutions by the General Assembly and other organs, calling for the elimination of unilateral coercive measures against developing countries, one Member State is resorting increasingly to the unilateral application of such measures, thereby openly flouting the majority will of international public opinion and the world community. The Government of the United States has recently launched a kind of "crusade" by enacting against certain developing countries unilateral coercive measures that threaten not only the integrity of those countries but also the sovereignty of third States. Such measures include the so-called Helms-Burton Act, which pressures potential investors or trading partners not to invest in or establish economic ties with Cuba, the ultimate aim being the collapse of Cuba's economy and the ability to dictate from the United States the island's political, economic and institutional future. Such laws are an affront to multilateralism in international relations.

15. The Government of Cuba is of the view that, in an increasingly globalized and interdependent world, the international community must take definite action to halt the increase in unilateral coercive measures, particularly extraterritorial measures, which threaten the very stability and integrity of the international system. It therefore trusts that the United Nations will be able to play a more active and decisive role in helping to secure an end to such practices.

16. The Government of Ecuador voted in favour of General Assembly resolution 50/96 because it believes that such measures indeed violate basic principles of international law and primarily affect the most vulnerable segments of the civilian population. Accordingly, in the Permanent Mechanism for Consultation and Concerted Political Action of the Rio Group, Ecuador has endorsed the idea of holding a full discussion on this topic in order to delineate joint policies rejecting the unilateral use of economic sanctions. Similarly, the Movement of Non-Aligned Countries has supported statements that reject the promulgation of laws having a negative impact on the freedom of international trade.

17. The Government of Estonia has never used political or economic sanctions against any country, except when authorized by the United Nations. The objective of the country's economic policy has been to encourage competition and entrepreneurial spirit through a liberal and non-discriminative trade regime for agricultural and industrial products and an openness regarding foreign investment and foreign exchange. The general principle of prohibiting the use of coercive trade policies would be better served if the narrow focus of the resolution would be broadened to include all countries.

18. In the view of the Government of the Gambia, the imposition of economic measures as a means of political and economic coercion against States by other States, especially without the approval of the recognized United Nations organ mandated to carry out such responsibilities on behalf of the international community, does not conform with the acceptable norms of international relations and, in particular, the principles enshrined in the Charter of the United Nations. The imposition of such coercive measures by one State or States against a developing State should be discouraged with a view to stopping the practice altogether in conformity with the principles of the Declaration on the Right to Development.

19. The Government of the Islamic Republic of Iran stated that interdependence and globalization are two features of the world economy that create both challenges and opportunities for sustained economic growth and sustainable development, particularly that of developing countries. Under those circumstances, the international community has shown its recognition of the urgent need for the creation of a favourable and conducive international economic and financial environment, a positive investment climate and an open, rule-based, equitable, secure, non-discriminatory, transparent and predictable multilateral trading system through the adoption of various resolutions and agreements at all levels. Against that background, it is of particular importance that States comply fully with international law, in particular, the Charter of the United Nations. However, despite the emergence of a new international environment, the United States of America regrettably continues to apply unilateral actions, including the continued promulgation and application

of laws and regulations whose extraterritorial impact severely affect the sovereignty of other States and the legitimate interests of their peoples. The recent enactment of laws by the United States for limiting the trade ties between the Islamic Republic of Iran, the Libyan Arab Jamahiriya and Cuba and their foreign partners are vivid cases in this category.

20. It is evident to the Government of the Islamic Republic of Iran that these and other forms of coercive economic measures, which are imposed on target countries for political purposes, go against the provisions of the Charter of the United Nations, as well as the principles of international law and freedom of trade and investment embodied in various international instruments and documents, including those establishing the World Trade Organization. Several resolutions and declarations adopted by the General Assembly exemplify those concerns. In addition, consideration of this very issue in all recent major international conferences indicates that the matter is multidimensional and affects all aspects of the development process in target countries, particularly in social and economic fields.

21. The Government of the Islamic Republic of Iran is of the view that the United Nations is well placed to address the multifaceted issue of unilateral coercive economic measures and its negative effects on all countries and on the world economy as a whole. In this regard, the undertaking by the relevant international institutions of the task of monitoring the imposition of measures of this nature and preparing methodologies and criteria for evaluating their impact on the affected countries, including the impact on trade and development, for the consideration of Member States, as requested in General Assembly resolution 50/96, provides a first practical step towards attaining this goal.

22. The Government of Iraq stated that in General Assembly resolution 50/96 the international community was urged to adopt urgent and effective measures to eliminate the use by some developed countries of unilateral coercive economic measures against developing countries. The resolution was adopted in response to the increasing severity of the economic measures employed by many developed countries in their dealings with developing countries, which deprive the latter of their right to development and economic advancement. The United Nations has urged respect for the right of States to development in a number of declarations and other instruments, in particular the Declaration on the Right to Development.[4] The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993, reaffirmed the right to development "as a universal and inalienable right and an integral part of fundamental human rights" and recommended that "States should cooperate with each other in ensuring development and eliminating obstacles to development".[5]

23. According to the Government of Iraq, the constant attempts seen at the present time to marginalize developing countries and isolate them economically by withholding advanced technology from them and by preventing them from developing their human resources and scientific expertise in the area of technology for development and from exploiting their natural resources to the full extent are an indication of the disregard of the developed countries for the will of the international community, as represented by the United Nations and as expressed in the declarations and statements on this issue, and are in violation of the principles and rules of international law. The United Nations

must endeavour to meet its responsibilities and to realize the purposes and principles laid down in its Charter, in particular those relating to the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian character.

24. Iraq is a developing country that is suffering greatly as a result of the coercive economic policies and measures exemplified in the complete economic embargo imposed on it more than seven years ago that affect the health of the Iraqi people and every aspect of its economic, social and cultural life. Just as Iraq was in the forefront of the developing countries by virtue of its endeavour to raise the standard of living of its people by placing the economic and development structure on a modern footing, the 30-Power aggression, led by the United States of America, was unleashed against it with a view to completely destroying its infrastructure and all its basic economic, industrial and development-related installations. The complete economic embargo that has been maintained against Iraq for over seven years has also done much to deny it the opportunity to keep pace with the changing requirements of sustainable development and even to carry out the threat (made by the United States Secretary of State to the Iraqi Minister for Foreign Affairs at Geneva on 9 January 1991) to return Iraq to a pre-industrial stage of development. That threat clearly shows the determination of the United States Administration to destroy the entire development structure of Iraq and deprive the Iraqi people of their right to development. It was with that aim that the coalition aircraft launched their destructive and frenzied attack on everything that could be considered a factor in the economic and social development of Iraq. The policies involving sanctions, coercive measures, trade restrictions and other such measures that are being adopted by developed countries on all kinds of pretexts demonstrate the determination of those countries to deprive developing countries of the opportunity for development and economic and human advancement.

25. The Government of Mexico stated that the fundamental principles of international law, which are enshrined in Mexico's Political Constitution, have been the cornerstone of its foreign policy, which has applied those principles to all the nations of the world and has demanded that the latter, in turn, observe and implement those principles without restriction. Mexico is an independent actor on the world stage that adheres to universally valid principles and bases its actions on law and reason. It condemns the use of force and unilateral measures, and makes positive contributions through initiatives to guarantee peace and civilized coexistence between nations. At the multilateral level, Mexico, in accordance with the principles of its foreign policy and the Charter of the United Nations, has reiterated its rejection of the promulgation and application of laws and unilateral regulations, the extraterritorial effects of which affect the sovereignty of other States, the legitimate economic interests of entities or persons under their jurisdiction and the freedom of trade and navigation.

26. The Government of Mexico supported General Assembly resolutions on the elimination of coercive economic measures as a means of political and economic coercion. Thus, the Mexican State joins the majority of the international community in rejecting such actions. Likewise, Mexico has reiterated its decision to establish, in full exercise of its sovereignty, trade and political links with such countries as it deems appropriate. In that connection, it has

expressed its opposition to the Cuban Liberty and Democratic Solidarity Act (also known as the "Helms-Burton Act"), which was adopted in 1996 by the United States of America. The international implications of that Act can be characterized as illegal under current international law, especially by reason of their unilateral and extraterritorial nature. Mexico considers that the promulgation and application of the Act violates the principles of international law set forth in the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations and the Charter of Economic Rights and Duties of States. In addition, the Act is contrary to the basic principles of trade and investment agreed upon in multilateral forums such as the World Trade Organization.

27. In exercise of its sovereign powers and with the cooperation of all the country's internal political forces, Mexico adopted the Act concerning the Protection of Trade against Foreign Regulations that Violate International Law. The Government of Mexico will continue to express its absolute rejection of all unilateral coercive economic measures that are not authorized by the relevant organs of the United Nations or are inconsistent with the principles contained in the Charter of the United Nations.

28. The Government of Venezuela has observed and will continue to observe the provisions of General Assembly resolution 50/96, in accordance with the basic principles of external policy embodied in its Political Constitution and its obligations arising out of the Charter of the United Nations and international law. In keeping with this policy, Venezuela has refrained from enacting or enforcing extraterritorial laws aimed at coercing another State and depriving it of its fundamental sovereign rights. On the contrary, the Congress of the Republic of Venezuela has expressed in numerous statements its categorical repudiation of unilateral coercive acts that adversely affect the economies of developing countries, on the ground that such acts contravene the basic principles of coexistence and international economic cooperation and the world consensus regarding the need for a non-discriminatory and open trading system.

29. The Holy See, because of its particular nature, does not have economic and trade relations with other States. However, by means of the articulation of its clear and principled stand on the question of the imposition of international economic sanctions and other means of political and economic coercion, especially by His Holiness Pope John Paul II, as well as through its diplomatic activity in this area, it has sought to alleviate the distress suffered by civilian populations that are either directly or indirectly affected by the imposition of such measures. The Holy See considers it to be legitimate for the international community to resort to economic sanctions when confronted with a specific Government that has acted in a manner that places world peace in danger. However, the Holy See holds that there are several conditions that must accompany the imposition of such sanctions, namely, sanctions may not be a means of warfare or punishment of a people; sanctions should be a temporary means of exerting pressure on Governments whose choices threaten international peace; sanctions must be proportionate to the goals they hope to achieve; and sanctions must always be accompanied by a dialogue between the parties involved.

30. His Holiness Pope John Paul II has stated that the embargo, clearly defined by law, is an instrument that needs to be used with great discernment and it must be subjected to strict legal and ethical criteria. It is always imperative to foresee the humanitarian consequences of sanctions, without failing to respect the just proportion that such measures should have in relation to the very evil that they are meant to remedy. Further, the humanitarian considerations that the Holy See applies to economic sanctions were articulated by His Eminence Angelo Cardinal Sodano, Secretary of State, who stated that the Holy See hoped that the Security Council would be better informed about the negative effects, on a humanitarian level, deriving from the application of sanctions imposed on a State in strict application of the Charter of the United Nations. A mechanism should be introduced that would allow for independent and effective control of the humanitarian consequences of sanctions and subsequently establish ways to correct those effects. The legitimate decision by the international community never dispenses with the due attention that must be paid to the concrete fate of the civilian population.

III. ACTION BY UNITED NATIONS BODIES, GLOBAL CONFERENCES AND OTHER INTERNATIONAL INSTRUMENTS

31. The previous report of the Secretary-General on the subject contains a comprehensive list of documents and legal instruments, including a description of their pertinent provisions, as well as actions by United Nations bodies, related to coercive economic measures (A/50/439, paras. 18-36). An update of relevant developments occurred within and outside the United Nations system since the publication of that report in 1995 and a review of United Nations decisions and other international instruments not mentioned therein are provided below.

A. United Nations bodies

32. The relevant resolutions and decisions adopted by the General Assembly, the Commission on Human Rights and the International Law Commission during the period under review are described below.

1. General Assembly

33. The General Assembly has considered the item entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" since its forty-sixth session, in 1991 (decision 46/407 and resolutions 47/19, 48/16, 49/9, 50/10 and 51/17). The General Assembly, in its resolution 51/17 of 12 November 1996, called upon all States to refrain from promulgating and applying laws and measures, such as the one promulgated on 12 March 1996 known as the "Helms-Burton Act", whose extraterritorial effects affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation, in conformity with their obligations under the Charter of the United Nations and international law; urged States that have and continue to apply such laws and measures to take the necessary steps to repeal or invalidate them as soon as

possible in accordance with their legal regime; and requested the Secretary-General, in consultation with the appropriate organs and agencies of the United Nations system, to submit to the Assembly at its fifty-second session a report on the implementation of the resolution.

34. The item entitled "Elimination of coercive economic measures as a means of political and economic compulsion" was included in the agenda of the fifty-first session of the General Assembly at the request of the Libyan Arab Jamahiriya (A/51/193). At that session, the Assembly, in resolution 51/22 of 27 November 1996, reaffirmed the inalienable right of every State to economic and social development and to choose the political, economic and social system which it deems most appropriate for the welfare of its people, in accordance with its national plans and policies; called for the immediate repeal of unilateral extraterritorial laws that impose sanctions on companies and nationals of other States; called upon all States not to recognize unilateral extraterritorial coercive economic measures or legislative acts imposed by any State; and requested the Secretary-General to submit to the Assembly at its fifty-second session a report on the implementation of the resolution.

35. In its resolution 51/103 of 12 December 1996 on human rights and unilateral coercive measures, the General Assembly urged all States to refrain from adopting or implementing any unilateral measure not in accordance with international law and the Charter of the United Nations, in particular those of a coercive nature with all their extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development; rejected unilateral coercive measures with all their extraterritorial effects as tools for political or economic pressure against any country, in particular against developing countries, because of their negative effects on the realization of all the human rights of vast sectors of their populations, in particular children, women and the elderly; and called upon Member States that have initiated such measures to commit themselves to their obligations and responsibilities arising from the international human rights instruments to which they are party by revoking such measures at the earliest time possible.

36. In the same resolution, the Assembly urged the Commission on Human Rights to take fully into account the negative impact of unilateral coercive measures, including enactment of national laws and their extraterritorial application, in its task concerning the implementation of the right to development; requested the United Nations High Commissioner for Human Rights, in discharging his functions relating to the promotion, realization and protection of the right to development, to give urgent consideration to the resolution in his annual report to the Assembly; requested Member States to notify the Secretary-General about the implications and negative effects of such measures on their populations in the various aspects referred to in the resolution; and requested the Secretary-General to report to the Assembly at its fifty-second session on the implementation of the resolution.

2. Commission on Human Rights

37. The Commission on Human Rights, in its resolution 1997/7 of 3 April 1997 on human rights and unilateral coercive measures,[6] called once again upon all States to refrain from adopting or implementing unilateral measures not in accordance with international law and the Charter of the United Nations, in particular those of a coercive nature with extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development; rejected the application of such measures as tools for political or economic pressure against any country, particularly against developing countries, because of their negative effects on the realization of all the human rights of vast sectors of their populations, inter alia, children, women and the elderly; reaffirmed, in that context, the right of all peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development; and also reaffirmed that essential goods such as food and medicines should not be used as tools for political coercion, and that in no case may a people be deprived of its own means of subsistence.

38. In the same resolution, the Commission endorsed and reaffirmed the criteria of the Working Group on the Right to Development according to which unilateral coercive measures are one of the obstacles to the implementation of the Declaration on the Right to Development; urged once again the working group on the implementation and promotion of the right to development to give due consideration to the negative impact of unilateral coercive measures in its task concerning the implementation of the right to development; requested the United Nations High Commissioner for Human Rights, in discharging his functions relating to the promotion, realization and protection of the right to development, to pay due attention and give urgent consideration to the resolution; and decided to examine the question, on a priority basis, at its fifty-fourth session.

3. International Law Commission

39. The International Law Commission, at its forty-eighth session, held from 6 May to 26 July 1996, adopted on first reading the draft articles on State responsibility, including article 50 entitled "Prohibited countermeasures" (formerly article 14), which provides, inter alia, that an injured State shall not resort by way of countermeasures to "extreme economic or political coercion designed to endanger the territorial integrity or political independence of the State which has committed the internationally wrongful act". The Commission decided to transmit the draft articles, through the Secretary-General, to Governments for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 1998.[7]

40. At its forty-ninth session, the International Law Commission reiterated its request to Governments for comments and observations on the draft articles on State responsibility adopted on its first reading. Pursuant to General Assembly resolution 51/160 of 16 December 1996, the Secretary-General transmitted, in

December 1996, a note requesting Governments to submit no later than 1 January 1998 comments and observations on the subject. As the Commission will begin the second reading of the draft articles at its fiftieth session, in April 1998, such comments and observations are essential for the preparation of the Special Rapporteur's report and for the consideration of the topic by the Commission.[8]

B. Global conferences

41. Several major international conferences, held in the 1990s under the auspices of the United Nations, referred to the issue of coercive economic measures. Relevant provisions of the final documents adopted by those conferences are described below.

1. World Conference on Human Rights

42. The World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, addressed the issue of coercive economic measures in the Vienna Declaration and Programme of Action, as follows:

> "The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure."[9]

2. World Summit for Social Development

43. The World Summit for Social Development, held in Copenhagen from 6 to 12 March 1995, referred to the issue of coercive economic measures in both the Copenhagen Declaration on Social Development and the Programme of Action.[10] Commitment 10 (d) of the Declaration states that, "at the international level, we will ... refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States".

44. In the Programme of Action of the World Summit for Social Development, a corresponding provision appears in paragraph 9 (e) of section I.A, entitled "A favourable national and international economic environment". Among other actions required in this area, paragraph 9 (e) provides for the following:

> "Refraining from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States, impedes the full realization of

social and economic development and hinders the well-being of the population in the affected countries."

3. Fourth World Conference on Women

45. The Beijing Declaration and Platform for Action, adopted on 15 September 1995 by the Fourth World Conference on Women, held at Beijing from 4 to 15 September 1995, refers to coercive economic measures in a section on strategic objectives and actions concerning women and armed conflict.[11] Under strategic objective E.3, paragraph 145 contains, inter alia, the following provisions regarding actions to be taken by Governments and international and regional organizations:

> "(h) Discourage the adoption of and refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations, that impedes the full achievement of economic and social development by the population of the affected countries, in particular women and children, that hinders their well-being and that creates obstacles to the full enjoyment of their human rights, including the right of everyone to a standard of living adequate for their health and well-being and their right to food, medical care and the necessary social services. This Conference reaffirms that food and medicine must not be used as a tool for political pressure;
>
> "(i) Take measures in accordance with international law with a view to alleviating the negative impact of economic sanctions on women and children."

4. United Nations Conference on Human Settlements (Habitat II)

46. The Istanbul Declaration on Human Settlements and the Habitat Agenda, adopted by the United Nations Conference on Human Settlements (Habitat II) on 14 June 1996, also contains a reference to the issue under review.[12] In chapter II, Goals and principles, of the Habitat Agenda, paragraph 25 contains, inter alia, the following text:

> "Civil, ethnic and religious strife, violations of human rights, alien and colonial domination, foreign occupation, economic imbalances, poverty, organized crime, terrorism in all its forms, and corruption are destructive to human settlements and should therefore be denounced and discouraged by all States, which should cooperate to achieve the elimination of such practices and all unilateral measures impeding social and economic development."

C. Other international or regional instruments

47. During the period under review, several intergovernmental bodies outside the United Nations system also addressed the issues raised by the imposition of coercive economic measures, especially those that are employed in a unilateral

and/or extraterritorial fashion. In this connection, references have been made, directly or indirectly, to the two recently adopted laws of the United States, namely, the Cuban Liberty and Democratic Solidarity Act of 1996 (also known as the Helms-Burton Act or Libertad Act)[13] and the Iran and Libya Sanctions Act of 1996 (also known as the D'Amato Law).[14] Factual information on some relevant developments in concerned international and regional forums is reported below.[15]

1. World Trade Organization

48. The delegation of Cuba formally raised the question of the United States "Cuban Liberty and Democratic Solidarity Act of 1996" in two organs of the World Trade Organization: the Council for Trade in Goods, on 19 March 1996, and the General Council, on 16 April 1996. No substantive decision was adopted on the matter at those meetings.

49. At the request of the European Union on 3 October 1996, the WTO Dispute Settlement Body, at its meeting held on 20 November 1996, established a panel to investigate the European Union complaint concerning the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 and other United States legislation on trade sanctions against Cuba. According to the European Union complaint, the United States legislation, particularly United States trade restrictions on goods of Cuban origin and possible refusal of entry into the United States of America of third-party persons involved in trafficking in the expropriated property in Cuba, was inconsistent with the United States obligations under the WTO Agreement. Specifically, violations of General Agreement on Tariffs and Trade (GATT) articles I, III, V, XI and XIII, and General Agreement on Trade in Services (GATS) articles I, III, VI, XVI and XVII have been alleged. It has also been alleged, in more general terms, that the United States measures would impede the attainment of the objectives of WTO and nullify or impair the expected benefits under GATT 1994 and GATS. On its part, the United States opposed the European Union action and refused to participate in the panel. According to the United States, WTO is not an appropriate forum for resolving differences over what is essentially a disagreement over foreign policy and the measures challenged by the European Union reflect abiding United States foreign policy and security concerns with respect to Cuba.

50. On 11 April 1997, it was announced that the European Commission and the Government of the United States had reached an interim agreement or understanding regarding the "Helms-Burton Act".[16] At the request of the European Union, dated 25 April 1997, the panel suspended its work under article 12.12 of the Understanding on Rules and Procedures concerning the Settlement of Disputes, which allows a panel's work to be suspended at any time at the request of the complaining party for a period not to exceed 12 months.

2. European Union

51. At its meeting on 15 July 1996, the Council of the European Union identified a range of measures that could be deployed by the European Union in response to damage to the interests of European Union companies resulting from the implementation of the Helms-Burton Act. That meeting led to the adoption on

22 November 1996 of Council Regulation (EC) No. 2271/96, entitled "Protecting against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country".[17] The purpose of the Regulation is to provide protection against and to counteract the effects of the extraterritorial application of the laws specified in its annex,[18] including regulations and other legislative instruments, and of actions based thereon or resulting therefrom, where such application affects the interests of the Community, natural or legal persons engaging in international trade and/or the movement of capital and related commercial activities between the Community and third countries. The articles of the Regulation include guidelines for reporting effects to the Commission (article 2); confidentiality of information (article 3); non-recognition of foreign judgements (article 4); non-compliance with foreign orders (article 5); recovery of damages, or "claw-back" clause (article 6); implementation (articles 7 and 8); sanctions (article 9); exchange of information (article 10); protected persons (article 11); and entry into force (article 12). In addition, the Council of the European Union adopted on the same date a joint action on the subject, which provides that each member State shall take the measures it deems necessary to protect the interests of persons defined by the Regulation against the effects of the legislation referred to in the Regulation insofar as these interests are not protected under the Regulation.[19]

3. Organization of American States

52. The General Assembly of the Organization of American States (OAS), in its resolution entitled "Freedom of trade and investment in the hemisphere",[20] requested the Inter-American Juridical Committee to examine the "Helms-Burton Act", with a view to providing an opinion as to its validity under international law. To this end, the Committee focused on such aspects of the Act as the protection of the property rights of nationals and the extraterritorial effects of jurisdiction. In its Opinion of 23 August 1996,[21] the Committee concluded that "significant areas" of said Act "are not in conformity with international law".[22]

IV. SUMMARY OF THE DELIBERATIONS OF THE AD HOC EXPERT GROUP MEETING

53. Pursuant to General Assembly resolution 50/96, the Department for Economic and Social Information and Policy Analysis of the Secretariat convened in New York from 30 June to 1 July 1997 an ad hoc expert group meeting on economic measures as a means of political and economic coercion against developing countries. The purpose of the meeting was to solicit the views of internationally renowned experts on key conceptual issues related to the imposition of coercive economic measures, in particular possible methodologies for evaluating the impact of such measures on the affected countries, with a view to formulating agreed conclusions.

54. The expert group included Margaret P. Doxey (Canada/United Kingdom); Kimberly Ann Elliott (United States of America); Ricardo Monge Gonzalez (Costa Rica); Patrick L. Robinson (Jamaica); Nicolaas J. Schrijver (Netherlands); and

Craig VanGrasstek (United States of America). Representatives of United Nations departments and programmes concerned were also invited to attend.

55. The group had before it three working papers prepared for the meeting: "Economic measures as a means of political coercion: a discussion of conceptual issues" by Ms. Doxey; "Methodology and criteria for evaluating the impact of economic sanctions on target States" by Ms. Elliott; and "A legal and historical perspective on economic sanctions, extraterritoriality, and the rights of neutral States" by Mr. VanGrasstek. As background documentation on the matter, recent resolutions of the General Assembly,[23] reports of the Secretary-General[24] and official communications received from Member States,[25] as well as special studies and publications on various aspects of the problem, were also made available at the meeting.

56. The main findings of the meeting are summarized below.

A. Conceptual issues

57. The concept of coercive economic measures embraces a variety of issues related to: (a) identification of essential elements, distinctive features and limitations of a definition of such measures; (b) specification and classification of motives and policy objectives of sender States in resorting to economic coercion against target States, in particular developing countries; and (c) categorization or selection of specific types of relevant measures, as well as analysis of their anticipated and actual effects.

1. Definition

58. As a starting point, it was recalled that coercive economic measures may be defined as negative economic activities (e.g., economic sanctions) imposed, unilaterally or collectively, by the sender State(s) on the target State(s) for primarily political (i.e., non-economic) purposes. While the group agreed with the core elements of this rather restrictive definition, several specific, defining features of economic measures as a means of political and economic coercion were raised and explored in the discussion.

59. The group recognized that many difficulties in developing a precise definition of coercive economic measures stem from the fact that the concept is largely of a behavioural and relational nature, which requires analysis on a case-by-case basis. While a defining feature of coercive economic measures is that they are politically motivated acts, their objectives may address a wide range of policy issues, including those in the economic, social, humanitarian and related fields (see sect. 2 below). The central definitional issue is that of identifying the coercive intent in negative economic activities that form part of discriminatory or punitive interventionist policies. This distinguishes them from consensual or positive economic measures, as well as from conditionalities. Experience shows that such activities are not confined exclusively to the relationship between developed and developing countries. Given a broad range of relevant measures (see sect. 3 below), the existence of sizeable economic damage, or the credible threat thereof, is an essential

condition for such acts to qualify as coercive economic measures. Although such measures may be imposed not only by individual States, but also by a group of States, the determination or judgement of alleged wrongful or objectionable policies of target States subject to coercive economic measures is made by sender State(s) largely on a unilateral or narrow-group basis.

60. In this connection, the expert group stressed the importance of the progressive development and codification of relevant norms of international law (e.g. the law of State responsibility, including countermeasures in response to international wrongful acts or prior injury) as well as specific enforcement provisions or mechanisms incorporated in international regimes, which provide a universally accepted basis for judging the legitimacy of the use of economic coercion under certain circumstances (see sect. B below).

61. In the light of the above, it has been suggested that objective determination of an unacceptable coercive economic act would require identification of the following four characteristics:

(a) Unilateral basis. Lack of clear and explicit backing from the international community;

(b) Coercive intent. Seeking a domestic or foreign policy change by the target State that is to the advantage of the coercer(s) and to the detriment of the coerced;

(c) Economic damage. Producing a serious instrumental impact, or a threat thereof, in a material and verifiable manner, on the economic interests of the target State (e.g., by exploiting an asymmetrical relationship between the economies of the coercer(s) and the coerced);

(d) Negative, interventionist nature. Providing no offer of reciprocal concession, adequate incentives or reward systems to induce policy changes.

2. Policy objectives

62. Identification and categorization of policy objectives, however complex and contentious, are essential elements in the concept of coercive economic measures. As part of the political process in the sender State(s), the formulation of policy objectives in specific cases of coercive economic measures often involves reconciliation of divergent opinions reflecting various interests. As a result, multiple objectives may be sought in particular cases and a variety of audiences may be addressed, including domestic constituencies of sender States, their allies and the world at large. Moreover, the explicitly stated policy objectives (e.g., change of objectionable policies) and the real motives or true intentions in adopting the negative measures are usually interrelated but not always identical. In public utterances, the sender States rarely acknowledge explicitly their dislike for a particular regime or more generally the political and economic system of the target State(s), preferring to claim they are safeguarding their own legitimate interests (e.g., national security) or to rely on rationales that have international community-based resonance (such as protection of the environment, promotion of human rights,

ensuring health and labour standards, countering terrorism or drug-trafficking). While some of those issues are regulated by international instruments, and some of those claims may be justified, the imposition of coercive economic measures is largely based on unilateral judgements by the sender State and may disguise the intent to advance its own interests (e.g., protectionism) at the expense of others.

63. The meeting agreed that the policy goals of sender State(s) may be classified, in general and analytical terms, under such broad headings or categories as deterrence, compliance, punishment, destabilization, solidarity and signalling.[26] Thus, deterrence operates by preventive action or threat of action taken (or contemplated) by the sender State in advance of objectionable acts by the target country. Compliance requires the target State to change its foreign and/or domestic policies that are in alleged violation of internationally agreed norms, standards or instruments. Punishment is inflicted essentially by adding to the target's costs of pursuing the policy to which the sender State(s) object. Destabilization seeks to replace the regime or more generally the political and socio-economic system of the target State, rather than its particular policies. It was agreed that coercive economic measures are most likely to be threatened or employed in pursuit of one or more of the above goals.

64. In certain circumstances, the goals of demonstrating solidarity or producing some form of signalling may also be considered relevant to the concept of coercive economic measures. Although solidarity acts are not primarily target-related, being taken in order to lend support to the initial sender State(s) as allies, such acts based on treaty obligations or other close ties may, in some cases, prompt the adoption of coercive measures. While symbolic measures would be defined as gestures of disapproval that do not have serious instrumental or coercive intent, negative measures usually have symbolic content in demonstrating possibility and/or willingness to resort to coercion. Negative acts may also seek to send signals, not only to the target State that feels their direct impact, but also to domestic audiences that may need to see that action is being taken, and to third States that may be deterred from risking similar treatment.

65. In the context of coercive measures as a means of political and economic coercion, it has been suggested that a possible typology of policy objectives would include the following:

(a) Exerting pressure for the adoption by the target State of domestic or foreign policies that are in the political and/or economic interests of the sender State;

(b) Obtaining specific concessions or privileged treatment for the sender State (including its nationals and/or business interests);

(c) Weakening the target State's economic capability (and, therefore, impairing its military potential), thus undermining its ability to pursue policies of its own choosing;

(d) Seeking the destabilization or ouster of a regime in the target State that the sender State views as resistant to its wishes or opposed to its interests.

66. In the absence of clearly defined criteria of acceptability, subjectivity in perception and judgement regarding the use of coercive economic measures have the potential for arbitrariness and abuse. Therefore, consideration of policy objectives of compliance-oriented economic measures should be based on internationally recognized, accepted or agreed norms, standards and instruments. In the area of peace and security, this applies to deterring, limiting or ending conflict, as well as countering international terrorism. In the economic, social and related fields, examples include protection of human rights, safeguarding established environmental, labour and health-related standards, as well as combating illicit drug-trafficking and promoting democracy and good governance.

3. Range of measures

67. The expert group reaffirmed that sender States can potentially resort to a wide variety of economic instruments of statecraft as a means of political and economic coercion. When economic measures are employed for coercive purposes, instrumental economic effects are obviously their primary objective, which is achieved by restricting the target State's access to markets, capital, technology and communications. The selection of specific type(s) of trade, finance or communication-related measures is intended to produce and maximize the negative economic impact on the target State, thus exerting a coercive force in order to compel a change in allegedly objectionable policies. It should be noted, however, that some apparently non-economic measures (e.g., denial of membership in international organizations or ban on the siting/hosting of international conferences or offices) can also have adverse economic effects on the target State.

68. For analytical purposes, a suggested typology of coercive economic measures, which can be used singly or in combination, would distinguish three broad categories or groups of such measures: (a) financial measures; (b) commercial and technical measures; and (c) travel and communications measures.[27] In a further specification, financial measures include: (a) reduction, suspension or cancellation of development (and/or military) assistance; (b) reduction, suspension or cancellation of credit facilities at concessionary or market rates; (c) freeze or confiscation of bank assets; (d) confiscation or expropriation of other assets; (e) freeze on interest or other transfer payments; (f) refusal to refinance or reschedule debt repayments; (g) blocking loans, grants, subsidies and funding for technical or other assistance from international organizations; (h) ban on insurance and other financial services.

69. Coercive measures of a commercial and technological nature include (a) import and/or export quotas; (b) restrictive licensing of imports and/or exports; (c) limited or total embargo on imports and/or exports; (d) discriminatory tariff policy (including denial of most favoured nation status, access to preferential treatment/tariffs under the generalized system of

preferences (GSP)); (e) restriction or cancellation of fishing rights; (f) suspension or cancellation of joint projects/ventures; (g) suspension or cancellation of trade agreements; (h) limitation or ban on technology exports/transfers; (i) curtailment, suspension or cancellation of technical assistance and/or training programmes; and (j) blacklisting business partners of the target State.

70. In the area of travel, transport and communications, coercive measures comprise (a) curtailment or prohibition of travel for business or pleasure; (b) restriction or cancellation of telephone, cable or postal links; (c) restriction or suspension or cancellation of landing and overflight privileges, water transit, docking and port privileges, and transshipment and land transit privileges.

71. While, in most cases, the above measures impose restrictions on the economic relations between the sender and the target State(s), their scope of application may, in some instances, be extended to third States (i.e., secondary boycotts) in order to limit or restrict further the target State's external links, thus reinforcing the adverse impact of the sender State's disapproval.

B. Legal issues

72. Consideration of legal issues related to the imposition of coercive economic measures involves identification and analysis of the evolving norms of international law, as manifested through conventions, international regimes, customary practices and declarations and resolutions adopted by international organizations and conferences. The essential problem is how to assess the legal significance and how to interpret such legal instruments and regimes for identifying and specifying applicable norms and criteria to be used in the judgement of the legitimacy of coercive economic measures, both in general terms and in specific cases. While the generally accepted interpretation of basic principles and norms of international law prohibits, as a general rule, the use by one State of economic coercion against another State, the enforcement provisions in most international instruments and regimes reflect a normative consensus on allowable exceptions under certain circumstances. However, there remains a lack of consensus in certain other respects and controversy with regard to some new developments in the application of coercive economic measures (e.g., the issue of extraterritoriality of their scope and effects).

1. Basic legal norms

73. The expert group confirmed that the basic principles of international law to be applied in assessing the legality of coercive economic measures are those of non-intervention and non-discrimination, based on such norms as the sovereignty and sovereign equality of States and the obligation to settle disputes by peaceful means. Those principles and norms, as set out in the Charter of the United Nations, elaborated in a number of international legal instruments and backed by declarations adopted by international conferences, proscribe the threat or use of force against the territorial integrity or political independence of any State and the imposition of coercive economic

measures as instruments of intervention in matters that are essentially within the domestic jurisdiction of any State, without prejudice, however, to the application of preventive or enforcement measures under Chapter VII of the Charter.

74. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations[2] is generally considered one of the most authoritative interpretations of the Charter of the United Nations, in particular the principles of peaceful settlement of disputes, sovereignty and non-intervention. The Declaration states, inter alia, that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind, and that every State has an undeniable right to choose its political, economic, social and cultural system, without interference in any form by another State. Thus, the Declaration reinforces the principles of sovereignty and non-intervention and provides clearly a consensus interpretation that coercion by whatever means, for the advantage of the coercer(s) and to the detriment of the coerced, should be excluded from international relations.

75. Other community-based concepts mentioned at the meeting were the maintenance of international peace and security and the quest for sustainable development, as well as good governance and the right to development. While the basic principles of sovereignty and non-intervention prohibit the use of economic coercion as a general rule, practical realization of the above concepts may allow certain exceptions to ensure compliance with internationally agreed norms, standards or obligations. However, in applying such exceptions and/or in cases of countermeasures, the response to an international wrongful act should be necessary (principle of necessity) and proportional to the seriousness of the violation (principle of proportionality), and the judgement should be made on a multilateral rather than on a unilateral basis (principle of multilateralism).

2. Allowable exceptions

76. The expert group agreed that it was useful to relate the conceptual framework to the legal analysis of specific cases of the imposition of coercive economic measures in order to determine their legitimacy. To that end, it may be possible to identify, at least for purposes of analysis, specific situations in which coercive economic measures may be both permissible and appropriate, thus constructing a "legitimacy indicator" for the use of such measures under certain circumstances. As possible indicators of legitimacy, the following situations would be relevant:

(a) Cases where multilateral economic sanctions are mandated by the Security Council as preventive or enforcement measures to maintain or restore international peace and security, under Chapter VII of the Charter of the United Nations;[28]

(b) Cases where the Security Council has determined that an Article 39 situation exists (i.e., a threat to the peace, breach of the peace or act of

aggression) even if, for whatever reason, there is no follow-up decision to employ mandatory economic sanctions or other measures provided for in Article 41 of the Charter;[29]

(c) Cases where voluntary economic sanctions are recommended by the Security Council, provided the sender States stay within the limits specified in the Council resolution;[30]

(d) Cases where economic sanctions are recommended by the General Assembly in resolutions adopted either by consensus or by large majorities over a period of time, in response to clear violations of international norms;[31]

(e) Cases where economic sanctions are imposed by regional organizations against their own members that have violated universal or regional norms, provided the latter are consistent with the purposes and principles of the United Nations;

(f) Cases where economic measures are adopted on a unilateral basis by one or more States in response to a clear violation of universally accepted norms, standards or obligations, provided the sender State(s) are not seeking advantages for themselves, but rather pursuing an international community interest;[32]

(g) Cases where proportional countermeasures are adopted by a State in retaliation for a prior injury, provided the attempts to negotiate a settlement precede such action and the adopted measures are not designed to endanger the territorial integrity or political independence of the target State.

77. It was also recalled that article XXI of GATT provides for security exceptions to GATT rules, albeit in a broad, self-judging and ambiguous way.[33] It states that nothing in the Agreement shall be construed, inter alia, to prevent any contracting party from taking any action that it considers necessary for the protection of its essential security interests. Thus, the provision leaves the definition of "essential security interests", particularly those with reference to "other emergency in international relations" up to the individual contracting parties. Moreover, as a "self-executing" provision, the article requires neither the prior approval of the other contracting parties nor any explicit notification by the country that invokes it. For those reasons, moderation and restrictive application of exceptions on the basis of national-security considerations are essential for reducing the likelihood of arbitrariness and abuse in justifying the imposition of coercive economic measures.

78. In the context of some other multilateral economic instruments (e.g., the Multilateral Agreement on Investment being developed under the auspices of the Organisation for Economic Cooperation and Development), proposals have been made to set certain limits or restrictions to the expansive interpretation and application of national-security exceptions. These include (a) establishing a "closed list" of circumstances in which a country might justifiably invoke the national-security clause; (b) introducing notification requirements under which the invoking country must give prior notification of its intended actions to a group of parties; (c) granting the right to consultation under which the other

affected parties would have an opportunity to raise their concerns with the invoking country, and may have further recourse; (d) limiting the scope of such exceptions so that they can apply to some provisions (e.g. the national treatment clause) but not to basic investment protections. If accepted, those proposals would have the potential of restricting the invocation of national-security exception for validating the use of coercive economic measures, as well as of preventing the secondary or extraterritorial application of such measures.

3. The issue of extraterritoriality

79. While sender States seek whenever possible to coordinate the imposition of coercive economic measures on a multilateral basis or to secure international support for such actions, they can also act unilaterally. Some of those unilateral acts have little or no direct effect on third parties, and hence do not raise questions of extraterritoriality. Unilateralism, nevertheless, carries an inherent danger of extraterritoriality and can encompass the extraterritorial application of coercive economic measures. This is the practice of instituting secondary boycotts which extend the scope of negative measures to third States in order to limit or prevent the continuation of normal economic relations between those States and the target State, thus reinforcing the impact of the primary boycott, especially when the latter is not yielding anticipated results. Such extraterritorial acts have, in several instances, aroused great resentment both in the target and affected third States and in some regional and international organizations.

80. As the most recent cases in point, the expert group discussed the legality of extraterritorial aspects of the Cuban Liberty and Democratic Solidarity Act of 1996 (also known as the Helms-Burton Act or Libertad Act) and the Iran and Libya Sanctions Act of 1996 (also known as the D'Amato Law), both passed into law of the United States. It was noted that in both cases the extraterritorial scope of the enacted measures is not merely incidental to the enforcement of the primary boycotts, but indeed constitutes a deliberate effort to influence economic behaviour in third States. Hence, the stated objective of those measures is to impose penalties on third-country nationals in order to dissuade them from engaging in trade and investment activities in Cuba, the Islamic Republic of Iran and the Libyan Arab Jamahiriya for largely politically motivated reasons. The expert group agreed that extraterritorial application of those United States laws was irreconcilable with basic norms and principles of international law and was inconsistent with the spirit of the WTO Agreement.

81. Apart from the extraterritorial dimensions, other notable features of the Helms-Burton Act mentioned at the meeting are (a) that it clearly states its coercive intent; (b) that it contains a detailed list of interventionist demands designed to bring about fundamental changes in Cuba's political and economic system as a necessary precondition for lifting the United States embargo; (c) that its provisions seek the return of confiscated property to a certain segment of the United States population; and (d) that it is a unilateral act which has caused strong criticism, disapproval and resentment from many States and international organizations. In that light, the expert group agreed, with deep concern, that the Helms-Burton Act constitutes a breach of international law, in particular the principles of sovereignty and non-intervention.

C. Impact assessment

82. Assessing the impact of coercive economic measures relates to the problem of their effectiveness. In broad terms, the area of impact assessment would include such dimensions as (a) estimating the costs and benefits for the sender State(s) and the distribution of those costs and benefits; (b) evaluating the welfare impact on the target State (economic effectiveness), as well as on non-target States (side-effects) and the global economy at large; and (c) identifying the enforced policy changes in the target State that are directly attributable to the effects of such measures (political effectiveness). According to its mandate, the expert group focused on examining basic methodologies and criteria for evaluating the impact of coercive economic measures on the affected countries, as well as the implications of such measures for trade and development. In this task, the main methodological difficulties are how to capture the direct welfare effects of such measures, on a comprehensive and dynamic basis, and how to distinguish those effects from the consequences of other economic and political variables or conditions, as well as policy-induced adjustments.

1. Criteria for analysis

83. The impact of coercive economic measures on the target State principally depends on the size and type of trade, and financial or communication links affected by such measures. Restrictions on international trade or capital flows typically result in a less efficient allocation of resources and lower national income in the affected States. In addition to their direct welfare impact, coercive economic measures can also cause or exacerbate broader economic and social problems, such as inflation and unemployment, and undermine the economy's growth potential. The initial impact of such measures on the target State depends on a number of factors that provide basic criteria for the impact analysis. These include:

(a) Sender-target economic linkages. The extent of trade, financial and other economic links between the sender and target States that exists prior to the imposition of coercive economic measures (e.g., sanctions) is important for the following two reasons: (i) the larger the proportion of the target State's trade and financial relations that is conducted with the sender State(s), the greater the senders' potential leverage over the target and, therefore, the actual cost of sanctions; (ii) even where alternatives are readily available to the target State, the transaction costs involved in finding new suppliers and markets are likely to rise with the volume of trade previously conducted with the sender State, as well as with increasing distance between the target State and alternative trading partners. In addition, it should be noted that the imposition of even minor sanctions carries the implicit threat of more drastic action. Whether that threat looms large or small also depends on the size of sender-target economic linkages. In cases where the sender State's potential leverage is large, even sanctions with relatively small economic costs may have substantial political effects.

(b) Type of measures. In terms of their direct welfare impact on the target State, various types of coercive economic measures operate in different

ways and can produce more or less severe effects. For instance, both export and import sanctions imposed by the sender State lower the total income generated by the target State; however, while an export sanction would work by raising prices for restricted goods and would lead to a less efficient allocation of resources, an import sanction would lower the price and quantity of goods or services exported by the target country. In addition to the income effects, import sanctions also deprive the target State of foreign exchange, which in turn impede its ability to import from third countries, as well as the sender State (if no explicit export sanctions have been imposed). Thus, an import sanction with the same estimated welfare loss as an equivalent export sanction may nevertheless have a greater overall impact on the target State. Similarly, financial sanctions that affect aid or credit may also affect a target country's ability to trade at pre-sanctions levels. Like machinery or parts, finance is also often an input in the production process and restrictions on its supply will typically have a greater economic impact than sanctions applied to any but the most essential consumption goods. Financial sanctions may also have relatively greater impact than trade sanctions because of a tendency to be self-enforcing in that they might affect the ability of the target State to repay loans to third countries or affect the profitability of operations owned by foreign investors. An asset freeze is the most extreme financial sanction, since it directly reduces the financial resources available to the target without the possibility of finding offsetting alternatives.

(c) International cooperation with the sender. Leverage over the target State can be increased by enlarging the size of the coalition imposing coercive economic measures. The more countries that cooperate in imposing such measures, the larger the proportion of the target State's external exchanges that can be covered and the larger the potential impact on its economy. The increased leverage is often illusory, however, if all the members of the coalition do not share the lead sender's objectives with the same intensity. Cooperation can come about because of a confluence of interests or because the lead sender offers either positive inducements or negative incentives to other countries. In the latter two cases, the costs to the coalition leader clearly rise but the impact on the target country will rise only to the extent that defections from the coalition can be observed and penalized.

(d) Offsetting assistance to the target. Even relatively large costs incurred by the target State as a result of coercive economic measures may be offset in whole or in part if there is a third party willing and able to step in with countervailing assistance.[34] In that context, such assistance refers to extraordinary efforts to countervail the impact of economic coercion on the target and not the ordinary reshuffling of markets and suppliers that occurs when the imposed economic measures are not multilateral and are less than comprehensive. With the end of the cold war, however, offsetting assistance may be offered less frequently in future episodes and in smaller quantities than before.

(e) Geography. The role of geography depends on whether it facilitates or hinders the enforcement of coercive economic measures, thus intensifying or easing the impact of such measures as trade or communication sanctions on the target State.

(f) Companion measures. Non-economic policy measures, such as military or quasi-military action, or covert activities, can also be used, in extreme cases, to intensify the impact of coercive economic measures and to buttress their enforcement (e.g., naval blockade).

(g) Economic health of the target. The economic situation in the target State prior to the imposition of coercive economic measures is another important factor in the impact assessment. An otherwise equivalent measure will have quite different effects in a stable, relatively diversified economy than it does in a less diversified economy and, especially, one that is suffering from economic weaknesses such as inflation and unemployment. In the latter situation, the direct impact of the imposed measure may not be that large but it may have a "tipping effect", sending the country into an inflationary spiral or other financial crisis.

84. The group agreed that the above factors or criteria would be particularly useful in analyses of the potential effect of coercive economic measures either before or soon after they are imposed. They can be used to construct "bottom-up" estimates of the costs to each country subject to such measures. It is also possible to use "top-down" methods and econometric techniques to estimate broad effects of coercive economic measures across a number of target and sender countries (see sect. 2 below).

2. Basic methodologies

85. A basic analytical model representing a country's export or import market of the sanctioned item (a good, service or financial flow) provides a general framework or a "bottom-up" method to estimate the welfare costs of sanctions to both the sender and the target States.[35] In this simple framework, the welfare loss (i.e., the loss of consumer and producer surplus) depends on the size of the initial deprivation caused by the sanctions and the elasticity of supply of and the demand for the sanctioned item in the affected country. Hence, assessing the impact on the target State in a particular sanctions episode requires, in the first instance, an estimate of the initial, gross value of the deprivation of markets or supplies resulting from the measures imposed by the sender State. This value can usually be observed if data on the pre-sanctions level of exports, imports, investment or other financial flows between the sender and the target are available. In order to determine the net impact, this gross value should be then multiplied by an estimated coefficient called the "sanctions multiplier". The value of this multiplier in a particular case, which is based on the combined elasticities of supply and demand, depends on the alternatives available to the target country. The values of supply and demand elasticities are determined, in turn, by such factors as the type of the good or service involved and the size of the sender and the target relative to one another and to the global market.

86. Experience gained in applying this methodology shows that demand is typically more inelastic for essential commodities such as food or energy than for luxuries, which can more easily be forgone. Imported inputs to the production process may be more difficult to replace or do without than many consumption goods and will have a larger impact if their absence affects

production of the final product. The elasticity of supply depends basically on the possibilities to increase production of the affected item. Supply of food, for example, is inelastic because changes in production depend on the season and on the supply of land, which is usually limited, making it difficult to increase supply in the short to medium run even if prices rise sharply. The availability of alternative suppliers or markets is, therefore, a key factor. The more simple and homogeneous a product is (e.g. grain), the more likely it is that an alternative supplier or market can be found; the more complex and unique the product (e.g., a high-technology item), the smaller the pool of potential suppliers or buyers. In general, the greatest potential impact of sanctions is when the sender State accounts for a large share of the global market for the good or service withheld.

87. In illustration of a "top-down" method for estimating the impact of coercive economic measures, the expert group referred itself to a recent study that attempts to empirically measure the impact of sanctions on bilateral trade flows, particularly on exports by the United States which is the most frequent sender of unilateral sanctions.[36] But the method used, a common one in economics known as the "gravity model", also captures the impact on the trade of the target country. Applying a common statistical technique, "ordinary least squares" regression analysis, to the "gravity model" allows the researcher to isolate the effect of sanctions on bilateral trade flows between a large number of countries while holding other factors constant, such as size and distance. Although the focus is on trade in goods, the model would also capture effects of financial sanctions to the extent that they reduce trade by denying investment, foreign exchange or credit to the target country, or by raising its cost of credit.

88. In order to test for the impact of sanctions on bilateral trade, the study developed a set of nine "dummy" variables indicating the presence of current or previous sanctions between each pair of countries included in the data set of 88 States. Given a wide variety of types of sanctions, all cases were divided into three categories: (a) limited, that is, minor financial, export, cultural or travel sanctions; (b) moderate, that is, broader trade or financial sanctions; and (c) extensive, that is, comprehensive trade and financial sanctions. A series of lagged variables indicating that sanctions had been lifted during the previous five years was also created to test for lingering effects of those sanctions.

89. The study found relatively large reductions in bilateral trade, even when relatively minor sanctions are imposed, but little evidence that the effects of sanctions on aggregate trade linger long after they are lifted. As expected, extensive sanctions, while in place, have a large impact on bilateral trade flows, consistently reducing them by about 90 per cent. There is more variance in the estimated impact of moderate and limited sanctions and the results are not as statistically robust, but they suggest an average reduction in bilateral trade of roughly a quarter to a third.[37] However, because the model analyses bilateral trade flows, an overall figure for the net effect of sanctions on the target State cannot be determined using this method. Nevertheless, estimation of the "residuals" from the regression, which indicate the degree to which actual trade is higher or lower than levels predicted by the model, would give some idea of the net impact of sanctions on target country trade. For example,

positive residuals for bilateral trade between the target and third countries not imposing sanctions would indicate that the target had managed to reorient its trade to reduce the impact of sanctions at least to some degree.

90. The expert group agreed that both methods referred to above provide a useful analytical framework for impact assessment and, in particular, can serve as helpful tools for estimating the welfare effects of coercive economic measures on the affected States. At the same time, it was noted that the application of those methods impose certain limitations to the scope and quality of analysis, which may benefit from their further development and improvement. These include the following points:

(a) As a partial-equilibrium model, the proposed "bottom-up" method or framework isolates the sanctioned item (a good, service or financial flow) from other elements of the target economy, which may also be affected by coercive economic measures. Computable general-equilibrium models may, therefore, serve as a more comprehensive alternative for impact assessment.

(b) The proposed model provides a comparative static approach to estimating the welfare impact of sanctions, but does not capture the dynamic effects (i.e., the impact on the long-run potential or growth rates of the economy). In another option, the trade and endogenous growth theory may be applied to address the linkage between restrictions on trade or capital flows and potential economic growth through the transfer of technology.

(c) Basing the "bottom-up" model on just two parameters - the elasticity of supply and the elasticity of demand - makes it relatively simple to apply in a particular case of coercive economic measures, but limits the scope of analysis to the impact on the economy as a whole (i.e. at the aggregate level of output, consumption, income or investment), without the possibility of a structural breakdown of effects (i.e. the impact on various sectors of the economy or population groups). Moreover, the role of different factors that determine the elasticity of supply (such as resource endowments in capital, materials, labour and technology) and the elasticity of demand (e.g. consumption patterns, range of substitutions and industrial structures) should be further explored and factored in the model. Similarly, applications of the "gravity model" in particular cases should include other variables besides size and distance that may influence trade flows (e.g., relative prices of the affected country, its industrial structures, consumption behaviour, income distribution, etc.).

(d) While national or bilateral trade models provide a framework for analysing the effects of coercive economic measures on individual countries (either target or sender States), an appropriate global econometric model would be required to estimate, in a comprehensive and simultaneous manner, the impact on the global economy and all its integral parts, including the target, sender and third-party States. In order to be operational, however, such a global model should comprise large-scale national models that should be designed to cover domestic economy, external sector and supply-side response to external shocks such as coercive economic measures.

(e) Beyond the task of impact assessment, quantitative analyses can be used to design a particular type or set of coercive economic measures, when permissible and appropriate, that would allow the sender(s) to achieve legitimate policy objectives in an optimal way (i.e., through the most efficient, effective and least harmful means). How the "game theory" or "control theory" can be applied for this purpose (especially to target the ruling elite but not civil society) should be further explored.

3. Implications for trade and development

91. In general, the impact of coercive economic measures on trade and development should be viewed and assessed in the context of current trends towards globalization and interdependence in the world economy. In view of the growing economic interdependence among countries, the imposition of negative economic measures entails adverse consequences or costs for both the sender and the target States, as well as various "spill-over" effects on third-party countries that are geographically and economically contiguous to the target State, thus distorting normal patterns of economic relations on an international scale. At the same time, the globalization of markets provides broader opportunities for redeployment of external trade, finance and labour, thus increasing the capacity of a target country (with due regard to the factors outlined in sect. 1 above) for adjustment to external shocks such as coercive economic measures. Nevertheless, damaging economic and social effects of such measures conflict with internationally accepted goals to promote economic development, social progress and better standards of living.

92. In extreme cases, where coercive economic measures are most likely to have important long-term effects, such measures are usually multilateral, comprehensive in scope, extensive in duration and also frequently coincide with civil or other military conflict that also thwarts economic development. The latter makes it very difficult to determine and disentangle the relative effects of coercive measures and those of other events or conditions. Moreover, the internal distribution of costs to target and third States usually creates serious social problems and raises humanitarian concerns on behalf of the weakest and most vulnerable groups such as children and the elderly. Furthermore, adjustments made to cope with coercive economic measures (e.g., investment in import-substitution activities) can also complicate economic recovery, liberalization and reintegration into the global economy after such measures have been lifted, since firms in import-competing sectors are not likely to be competitive in the global markets without government subsidies that could become very costly to maintain.

93. In most cases where estimates are available, the costs of unilateral coercive measures are relatively small (about 1 per cent of GDP). For an integrated economy, the long-term effects of such measures may be reduced to the increased transaction costs, especially transportation costs, of reallocating market shares among available suppliers and markets. However, in cases where the target is a small developing country and the sender is a large, proximate State that is also a major trading partner and source of financial aid, investment and credit, these transaction costs and other effects of coercive economic measures are likely to be fairly large. Thus, developing countries are

particularly vulnerable to such measures because they have few resources to fall back on and are often highly dependent on foreign trade (e.g., a single commodity for export earnings) and investment. Experience suggests, however, that economic and social pain inflicted on people in the target State does not always translate quickly and successfully into policy change by its Government, depending on the particular circumstances of individual cases. This requires further case studies and empirical analyses, including both quantitative and qualitative assessments.

D. Institutional issues and follow-up

94. The expert group expressed deep concern about the potential adverse effects of coercive economic measures on the structure of international relations, in particular in the area of trade and development. The importance of international cooperation, including multilateral and bilateral negotiations on contentious issues, and of positive economic measures that involve adequate incentives and reward systems to induce policy changes, when warranted, was reaffirmed and stressed at the meeting as a more rational and viable alternative to unilateral coercive economic measures in most cases. The expert group agreed that the problems raised by the imposition of coercive economic measures, including their economic, social, political and legal aspects, deserve increased attention by the international community and multilateral bodies. The group considered that within the United Nations, intergovernmental deliberations (or normative activities) should be supported by analytical and monitoring capacities of the Secretariat. It recommended that analytical and conceptual work be carried out both at the specialized level (e.g., through continued efforts for developing methodologies and criteria for impact assessment) and on an interdisciplinary scale (i.e., interrelationship between the political, legal, economic and social dimensions of the problem). It further noted that the monitoring function would require effective cooperation and coordination of activities within the United Nations system and beyond (e.g. with the Trade Policy Review Mechanism of WTO), based on clearly defined mandates.

Notes

[1] General Assembly resolution 2131 (XX).

[2] General Assembly resolution 2625 (XXV), annex.

[3] General Assembly resolution 3281 (XXIX).

[4] General Assembly resolution 41/128, annex.

[5] A/CONF.157/24 (Part I), chap. III, sect. I, para. 10.

[6] See Official Records of the Economic and Social Council, 1997, Supplement No. 3 (E/1997/23), chap. II, sect. A.

[7] Official Records of the General Assembly, Fifty-first Session, Supplement No. 10 and corrigendum (A/51/10 and Corr.1), paras. 63 and 64.

[6] Ibid., Fifty-second Session, Supplement No. 10 (A/52/10), paras. 29 and 30.

[9] A/CONF.157/24 (Part I), chap. III, sect. I, para. 31.

[10] See Report of the World Summit for Social Development, Copenhagen, 6-12 March 1995 (United Nations publication, Sales No. 96.IV.8), chap. I.

[11] See Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (United Nations publication, Sales No. 96.IV.13), chap. I, resolution 1.

[12] See Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, 3-14 June 1996 (A/CONF.165/14), chap. I, resolution 1.

[13] The Act includes three titles that may directly affect nationals of third States. Title I consolidates the requirements to comply with the United States economic and financial embargo concerning Cuba, including prohibition of entering a United States port by third-party vessels that have visited Cuba. Title III permits United States claimants to property confiscated by Cuba to bring suit in United States courts against third-party persons or companies that have profited from the use or purchase of the expropriated property. Title IV bars entry into the United States of any business executive (or family member) whose company invests in or profits from the use of property in Cuba that was confiscated from its United States owners (see International Legal Materials, vol. XXXV, No. 2 (1996), pp. 357-378).

[14] The Act provides, inter alia, for penalties on firms or persons investing in the petroleum or natural gas industries of either the Islamic Republic of Iran or the Libyan Arab Jamahiriya at a level of $40 million or more annually, or that aid the Libyan Arab Jamahiriya in the development of its military capabilities. These penalties apply both to United States and to third-party firms and persons (see International Legal Materials, vol. XXXV, No. 5 (1996), pp. 1273-1279).

[15] Other examples of relevant actions taken by various international forums include the Rio Group statement issued on 8 March 1996 concerning the Cuban Liberty and Democratic Solidarity Act (A/51/94, annex); the statement dated 19 March 1996 issued by the Movement of Non-Aligned Countries concerning the Helms-Burton Act (A/51/85, annex); the communiqué issued by the Ministers for Foreign Affairs and heads of delegation of the Movement of Non-Aligned Countries on the occasion of the Meeting of the Ministerial Committee on Methodology, at Cartagena de Indias, Colombia, on 15 and 16 May 1996 (A/51/154, annex); the Declaration of the Tenth Summit of Heads of State and Government of the Rio Group, held at Cochabamba, Bolivia, on 3 and 4 September 1996 (A/51/375, annex); the Declaration of the Movement of Non-Aligned Countries, issued on 24 September 1996 on the occasion of the celebration of the thirty-fifth anniversary of the founding of the Movement (A/51/462, annex); the communiqué of the Meeting of Ministers for Foreign Affairs and heads of delegation of the Movement of Non-Aligned Countries, held in New York on 25 September 1996, to the General Assembly at its fifty-first session (A/51/473, annex); decision 377, adopted at the twelfth regular meeting of the Latin American Council of the

Latin American Economic System, held at Montevideo, Uruguay, on 23-25 October 1996 (A/51/669, annex); the Declaration of Viña del Mar adopted by the Sixth Iberoamerican Summit of Heads of State and Government, held at Santiago and Viña del Mar, Chile, on 10-11 November 1996; the final document of the Twelfth Ministerial Conference of the Movement of Non-Aligned Countries, held at New Delhi on 7-8 April 1997 (A/51/912, annex).

[16] "Financial Times", 12-13 April 1997.

[17] See International Legal Materials, vol. XXXVI, No. 1 (1997), pp. 125-131.

[18] The annex lists the following United States legislation: the Cuban Democracy Act 1992; the Cuban Liberty and Democratic Solidarity Act of 1996; the Iran and Libya Sanctions Act of 1996; and the Cuban Assets Control Regulations.

[19] See International Legal Materials, vol. XXXVI, No. 1 (1997), p. 132.

[20] AG/DOC.3375/96.

[21] CGI/SC/II/doc.67/96/Rev.5.

[22] For the text of the Opinion of the Inter-American Juridical Committee in Response to the OAS Resolution on Freedom of Trade and Investment in the Hemisphere, approved unanimously on 23 August 1996, see International Legal Materials, vol. XXXV, No. 5 (1996), pp. 1322, 1329-1334.

[23] General Assembly resolutions 50/96 on economic measures as a means of political and economic coercion against developing countries, 50/10 and 51/17 on the necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba, 51/22 on the elimination of coercive economic measures as a means of political and economic compulsion, and 51/103 on human rights and unilateral coercive measures.

[24] Reports of the Secretary-General on economic measures as means of political and economic coercion against developing countries (A/50/439), on the necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba (A/51/355 and Add.1), and on human rights and unilateral coercive measures (E/CN.4/1996/45 and Add.1).

[25] Letters dated 19 October 1996 and 29 May 1997 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General (A/51/531 and A/52/162, respectively).

[26] For a more detailed discussion of contexts and frameworks for sanctions and the intentions of senders, see Margaret P. Doxey, International Sanctions in Contemporary Perspective, second edition, (London, Macmillan/New York, St. Martin's Press, 1996), chap. 3.

[27] For a more comprehensive typology of non-violent sanctions, see Doxey, op. cit., table 1.1, pp. 14-15.

[28] To date, there have been 11 such cases; mandatory sanctions were imposed on Southern Rhodesia (1966), South Africa (1977), Iraq (1990), Yugoslavia (1991) and Serbia and Montenegro (1992), Somalia (1992), the Libyan Arab Jamahiriya (1992), Liberia (1992), Haiti (1993), Angola (UNITA) (1993), Rwanda (1994) and the Sudan (1996). Since 1990, three cases - Iraq, the Federal Republic of Yugoslavia (Serbia and Montenegro) and Haiti - involved comprehensive economic sanctions, and sanctions against Iraq are still in force. The Libyan Arab Jamahiriya is subject to a limited set of economic sanctions, while arms embargoes are in force for Somalia, Liberia, Angola (UNITA) and Rwanda. The Sudan is subject to limited diplomatic sanctions.

[29] Examples include Security Council resolutions 457 (1979) and 461 (1979) concerning the seizure of the United States embassy and diplomats in Tehran, and 502 (1982) regarding the Falklands Islands (Islas Malvinas).

[30] For instance, specific, voluntary economic sanctions were recommended by the Security Council in response to the South African occupation of Namibia (Council resolution 566 (1985)) and the intensification of apartheid in South Africa (Council resolution 569 (1985)).

[31] A notable example would be the numerous resolutions of the General Assembly calling for economic sanctions to be imposed on South Africa's apartheid regime.

[32] In such cases, recourse in the first instance should be to the relevant international body (e.g., the Security Council) to identify the offending behaviour and to seek an appropriate mandate for redress.

[33] It should be noted that the creation of WTO does not eliminate GATT article XXI. The article is among the provisions of the old GATT - now known as "GATT 1947" - which is wholly incorporated into the WTO legal regime.

[34] Some estimates suggest that during the cold war period the subsidies provided by the Soviet Union to Cuba exceeded the latter's costs resulting from United States sanctions (see Gary Clyde Hufbauer, Jeffrey J. Schott and Kimberly Ann Elliott, Economic Sanctions Reconsidered: History and Current Policy, second edition, revised (Washington, D.C., Institute for International Economics, 1990), pp. 200-202).

[35] For a detailed presentation of this methodology, see Hufbauer, Schott and Elliott, op. cit., appendix A, pp. 120-122.

[36] Gary Clyde Hufbauer and others, "US economic sanctions: their impact on trade, jobs and wages" (Washington, D.C., Institute for International Economics, April 1997).

[37] Applying the model to United States exports, the study concluded that United States sanctions in place in 1995 reduced exports to 26 target countries by $15 billion to $19 billion (see Hufbauer and others, op. cit., p. 2).